

FBI and ATF Handouts

Thursday, February 13, 2014


Law and Justice Meeting
February 13 , 2014

Exhibit 2


Federal Bureau of Investigation
National Instant Criminal
Background Check System
(NICS)
Presented by:
Sherre Y. Baker
NICS Liaison Specialist

**NICS MISSION
STATEMENT**
To enhance national security and
public safety by providing the
timely and accurate determination
of a person's eligibility to possess
firearms and/or explosives in
accordance with federal law.

The Brady Handgun Violence Prevention Act of 1993
(Brady Act), approved by Congress on November 30, 1993,
amended the Gun Control Act of 1968.



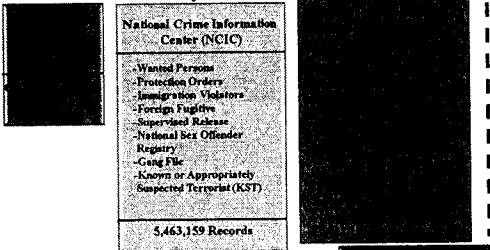
The NICS Process . . .



Federal Firearms Licensees (FFL) contact the NICS by telephone, or other electronic means, for information to be supplied immediately on whether receipt of firearms violates state or federal law.

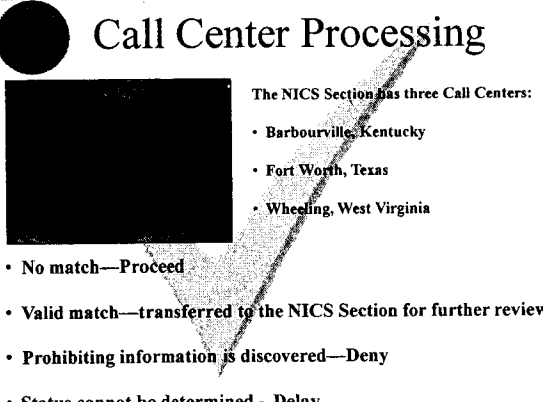
When an FFL initiates a background check, a search is conducted based on name and required descriptive data.

Types of Records Searched by the NICS



01/2014

Call Center Processing



The NICS Section has three Call Centers:

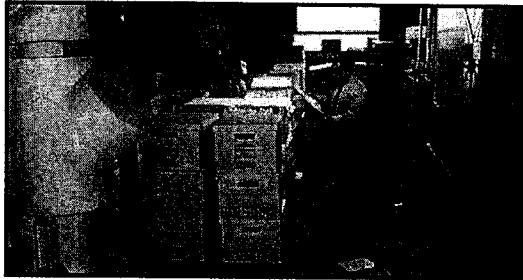
- Barbourville, Kentucky
- Fort Worth, Texas
- Wheeling, West Virginia

- No match—Proceed
- Valid match—transferred to the NICS Section for further review
- Prohibiting information is discovered—Deny
- Status cannot be determined—Delay

THE GUN CONTROL ACT 18 U.S.C. 922(g) & (n)

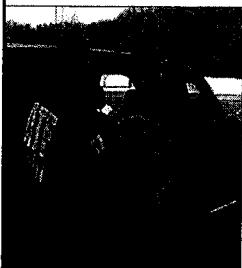
- (g)(1) Are Convicted of a Crime Punishable by Imprisonment for a Term Exceeding One Year
- (g)(2) Are Fugitives From Justice
- (g)(3) Are Unlawful Users of or Addicted to Any Controlled Substance
- (g)(4) Have Been Adjudicated as Mental Defectives or Been Committed to a Mental Institution
- (g)(5) Are Aliens and Are Illegally or Unlawfully in the United States
- (g)(6) Have Been Discharged From the Armed Forces Under Dishonorable Conditions
- (g)(7) Have Renounced Their U. S. Citizenship
- (g)(8) Are Subject to a Court Order Restraining Them From Committing Domestic Violence
- (g)(9) Have Been Convicted in Any Court of a Qualifying Misdemeanor Crime of Domestic Violence
- (n) Are Under Indictment/Information for a Crime Punishable by Imprisonment for a Term Exceeding One Year

The NICS contacts agencies to obtain missing dispositions.



Three-Business-Day Requirement

Ensure the three-business-day requirement is met by:



- Improved information sharing
- Complete criminal histories
- Improved record keeping
- Quick response to record requests

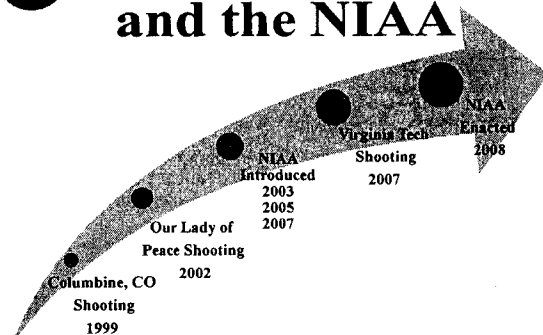
NICS Improvement Amendments Act of 2007 (NIAA)

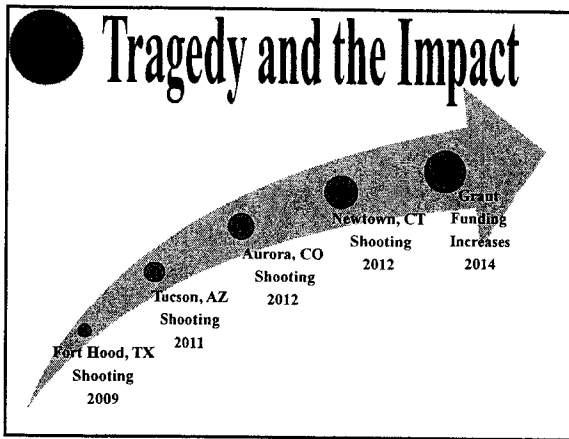
Amends the Brady Act to improve the NICS by providing incentives to state and tribal agencies; and establishing requirements for federal agencies.

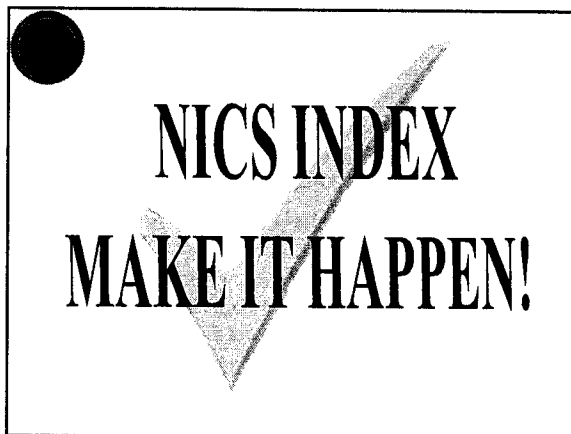
The NIAA Purpose

The NIAA seeks to address gaps in prohibiting information available for use in a NICS check. Filling the gaps will enable the NICS to operate as intended. Accurate and complete criminal history records result in successful denials and immediate proceeds of firearm transactions.

Mass Shootings and the NIAA







● What is the NICS Index?

The NICS Index is a database created to contain information of persons prohibited from receiving firearms under Public Law 103-159, known as the Brady Handgun Violence Prevention Act of 1993.

Required Fields

An entry into the NICS Index requires, at a minimum, the following fields to be populated:

- Name
- Sex
- DOB (Date of Birth may be replaced by a qualifying miscellaneous identification number or social security number)
- PCA-Prohibiting Category Code
- ARI-Agency Record Identifier
- ORI-Originating Agency

Federal Prohibitor 922 (g)(4)

ADJUDICATED AS A MENTAL DEFECTIVE OR COMMITTED TO A MENTAL INSTITUTION

1. A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition or disease:
 - ❖ Is a danger to himself or others; or
 - ❖ Lacks the mental capacity to manage their own affairs.
2. A person found to be insane by a court in a criminal case.
3. A person found incompetent to stand trial or found not guilty by reason or lack of mental responsibility.
4. A person formally committed to a mental institution by a court, board, commission, or other lawful authority.

(Only one of the four must be met under Title 18, United States Code, Section 922 (g) (4))

Involuntary Commitment

A court ordered involuntary commitment for treatment to a mental institution, includes commitments to all mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and any other facility where a licensed professional diagnoses mental retardation or mental illness.

Note: If a commitment is voluntary, it does not meet the federal prohibition.

Danger to Self or Others

Threatening mental health conditions must result in an adjudication by a court, board, commission, or other lawful authority.

A mental health diagnosis lacking adjudication does not qualify for NICS Index entry.

Criminal Adjudications

- **Not Guilty by Reason of Insanity:**

Is it documented on a criminal history record at the national level?

- **Incompetent to Stand Trial:**

If a dismissal exists, is the reason for dismissal clearly documented on the criminal history record?

NIAA Relief Program Requirements

- A state relief from disabilities program is required as a condition for participation in NICS Act Record Improvement Program (NARIP) funding.
- A qualified relief from disabilities program provides a person adjudicated as a mental defective, or committed to mental institution, to apply for relief from disabilities imposed by subsections (d)(4) and (g)(4) of 18 U.S.C. § 922.
- A state court, board, commission or other lawful authority must consider the applicant's petition for relief. The lawful authority may only consider applications for relief due to mental health adjudications that occurred in the same State.

Firearms not Explosives

Although a state's certificate of relief program, approved by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), for the mental health prohibition, provides an avenue to relieve an individual's right to purchase or possess firearms, it does not relieve an individual's right to purchase or possess explosives. Individuals receiving a relief will remain explosives prohibited.

The Challenge

- Automate data collection for real-time reporting.
- Research records with potential firearm disqualifiers and update records.
- Organize data collection from state and private mental health institutions.
- Submit information not placed in the III and the NCIC into the NICS Index.

NICS Index Contact Information

Sherre Y. Baker
NICS Liaison Specialist
(304) 625-7348
sherre.baker@leo.gov

NICS Customer Service:
(877) 324-NICS

**Relief from Disabilities Program Criteria
under the
NICS Improvement Amendments Act of 2007**



United States Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

**NICS Improvement Amendments Act of 2007
Relief Program Requirement for States**

- Section 105
 - State relief from disabilities program is required as condition for participation in grant programs.
 - State must certify to the satisfaction of the Attorney General that it has a qualifying relief from disabilities program.
 - ATF Form 3210.12

Relief from Disabilities Program Criteria

1. Actual relief from disabilities program under State law.
 - State law either:
 - Sets out a relief from disabilities program by statute; or
 - Delegates authority to an agency of the State to promulgate regulations to provide for a relief from disabilities program.

Relief from Disabilities Program Criteria

2. Program permits a person adjudicated as a mental defective, or committed to mental institution, to apply to State for relief from disabilities imposed by subsections (d)(4) and (g)(4) of 18 U.S.C. § 922.

Relief from Disabilities Program Criteria

3. A State court, board, commission or other lawful authority must consider the applicant's petition for relief.
 - The lawful authority may only consider applications for relief due to mental health adjudications that occurred in the same State.

Relief from Disabilities Program Criteria

4. Relief shall be granted pursuant to State law and in accordance with principles of due process.
 - Due process in this context includes:
 - Opportunity for the applicant to present evidence;
 - Independent decision maker—someone other than the individual who created the record.
 - A record of the matter must be created and maintained for review.

Relief from Disabilities Program Criteria

5. In determining whether to grant relief, the lawful authority must receive evidence concerning and consider the following:
- Circumstances regarding the firearms disabilities imposed by 18 U.S.C. § 922(g)(4); and
 - Applicant's record
 - Which must include, at a minimum, applicant's mental health and criminal history records; and
 - Applicant's reputation
 - Developed, at a minimum, through character witness statements, testimony, or other character evidence.

Relief from Disabilities Program Criteria

6. Relief shall be granted if circumstances regarding the disabilities and the applicant's record and reputation are such that:
- the applicant will not be likely to act in a manner dangerous to public safety;
 - and the granting of relief would not be contrary to the public interest.

Relief from Disabilities Program Criteria

7. Once a finding is made, if relief is denied the State must provide for *de novo* judicial review:
- Applicant may petition a court of appropriate jurisdiction to review the denial
 - Including the record of the denying court, board, commission or other lawful authority.
 - Reviewing court may, but is not required to, give deference to the decision of the lawful authority that denied the application for relief.
 - If cases of denial by a lawful authority other than a State court, the reviewing court must have discretion to receive additional evidence necessary to conduct an adequate review.

Relief from Disabilities Program Criteria

8. Once a finding is made, if relief is granted:
- Adjudication or commitment is deemed not to have occurred for purposes of subsections (d)(4) and (g)(4) of 18 U.S.C § 922.
 - State must update, correct, modify or remove the record from any database that the Federal or State government maintains and makes available to NICS.



United States Department of Justice

Bureau of Alcohol, Tobacco, Firearms and Explosives

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Office: 202-648-7138

NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

NICS Index

Brady Act Requirements

The Brady Handgun Violence Prevention Act of 1993 (Brady Act), Public Law 103-159, was signed into law requiring Federal Firearms Licensees (FFLs) to request background checks on prospective firearm transferees. The permanent provisions of the Brady Act, effective November 30, 1998, required the U.S. Attorney General establish the National Instant Criminal Background Check System (NICS). FFLs may contact the NICS by telephone or other electronic means to determine whether or not the transfer of a firearm would violate Section 922 (g) or (n) of Title 18, United States Code (U.S.C.) or state law.

The NICS is a national system that checks available records in the National Crime Information Center (NCIC), the Interstate Identification Index (III), and the NICS Index to determine if prospective transferees are disqualified from receiving firearms.

Prohibiting Categories Defined by Statute

The NICS Index contains information provided by local, state, tribal, and federal agencies of persons prohibited from receiving firearms under federal law. The NICS Index contains prohibiting information which may not be found in the NCIC or the III.

Section 922 (g) of the Gun Control Act prohibits certain persons from shipping or transporting any firearm in interstate or foreign commerce, or receiving any firearm which has been shipped or transported in interstate or foreign commerce, or possessing any firearm in or affecting commerce. These prohibitions apply to any person who:

18 U.S.C. §922 (g) (1)

Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.

18 U.S.C. §922 (n)

Is under indictment for a crime punishable by imprisonment for a term exceeding one year.

18 U.S.C. §922 (g) (2)

Is a fugitive from justice.

18 U.S.C. §922 (g) (3)

Is an unlawful user of or addicted to any controlled substance.

18 U.S.C. §922 (g) (4)

Has been adjudicated as a mental defective or committed to a mental institution.

18 U.S.C. §922 (g) (5)

Is illegally or unlawfully in the United States. Is an alien illegally or unlawfully in the United States or who has been admitted to the United States under a nonimmigrant visa.

18 U.S.C. §922 (g) (6)

Has been discharged from the Armed Forces under dishonorable conditions.

18 U.S.C. §922 (g) (7)

Having been a citizen of the United States, has renounced U.S. citizenship.

18 U.S.C. §922 (g) (8)

Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner.

18 U.S.C. §922 (g) (9)

Has been convicted in any court of a misdemeanor crime of domestic violence.

Please reference the Federal Register, Volume 62, Number 124, Rules and Regulations, for more complete definitions of the prohibiting categories.

Submission Process

The local, state, tribal, and federal agencies are provided with two modes to add, modify, supplement, or cancel NICS Index entries.

The first mode is an electronic connection between the NICS and the contributing agency using the NCIC-Front End. An agency may use this interface to electronically submit, modify, supplement, cancel, or display a denied person's disqualifying information in the NICS Index. The second mode is batch data transfer on CD, diskette, or by secure e-mail. The NICS Index entries, modifications, supplements, and cancellations are to be processed by the contributing agency, since the contributing agency is responsible for the accuracy and validity of the NICS Index information. It is imperative to update the NICS Index, as necessary, to minimize erroneous denials. The contributing agency is responsible for responding to appeals, assessments, and audits of the submitted records.

In addition to local, state, tribal, and federal agencies voluntarily contributing information to the NICS Index, the NICS Section receives telephone calls from mental health institutions, psychiatrists, police departments, and family members requesting placement of individuals into the NICS Index. Frequently, these are emergency situations and require immediate attention. Any documentation justifying a valid entry into the NICS Index must be available to the originating agencies.

NICS Information

Customer Service
1-877-324-NICS (6427)

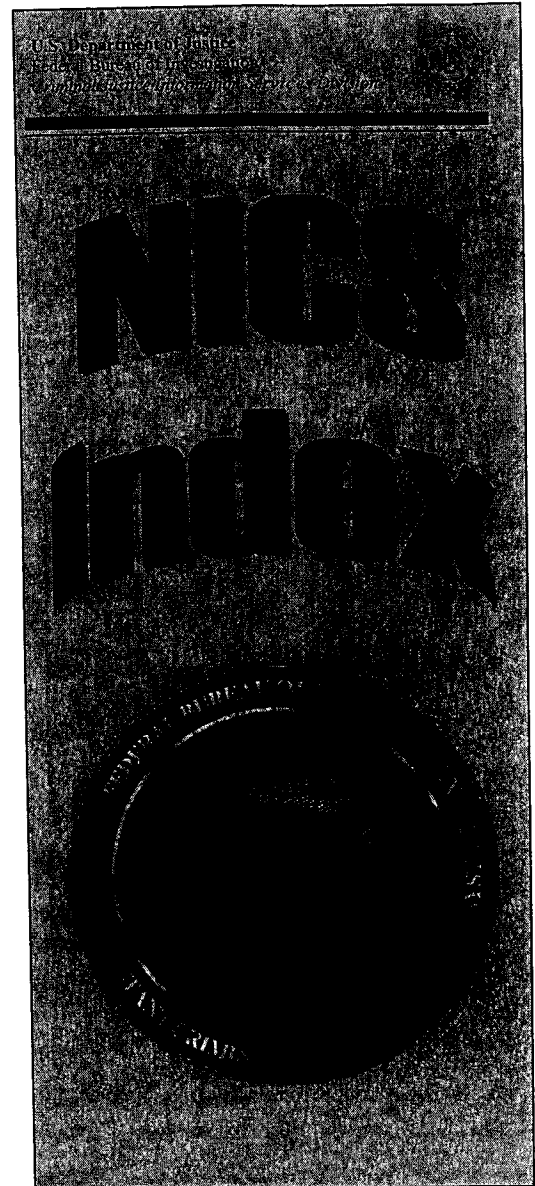
Facsimile
1-888-550-6427

**Telecommunications Device
for the Deaf (TDD)**
1-877-NICS-TTY

NICS Web Site:
<www.fbi.gov/about-us/cjis/nics>

NICS E-Mail Address
<NICS@IC.fbi.gov>

December 2013



FEDERAL FIREARMS PROHIBITION UNDER 18 U.S.C. § 922(g)(4)
PERSONS ADJUDICATED AS A MENTAL DEFECTIVE OR COMMITTED TO A MENTAL INSTITUTION

Any person who has been “adjudicated as a mental defective” or “committed to a mental institution” is prohibited under Federal law from shipping, transporting, receiving, or possessing any firearm or ammunition. Violation of this Federal offense is punishable by a fine of \$250,000 and/or imprisonment of up to ten years. See 18 U.S.C. §§ 922(g)(4) and 924(a)(2). The terms enumerated below are located in 27 C.F.R. § 478.11.

A person is “**adjudicated as a mental defective**” if a court, board, commission, or other lawful authority has made a determination that a person, as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease:

- ❖ Is a danger to himself or to others;
- ❖ Lacks the mental capacity to contract or manage his own affairs;
- ❖ Is found insane by a court in a criminal case; **or**
- ❖ Is found incompetent to stand trial, or not guilty by reason of lack of mental responsibility, pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. §§ 850a, 876b.

A person is “**committed to a mental institution**” if that person has been formally committed to a mental institution by a court, board, commission, or other lawful authority.

The term **includes** a commitment:

- ❖ To a mental institution involuntarily;
- ❖ For mental defectiveness or mental illness; or
- ❖ For other reasons, such as for drug use.

The term **does not include** a person in a mental institution for observation or voluntary admission.

The term “**lawful authority**” means an entity having legal authority to make adjudications or commitments.

The term “**mental institution**” includes mental health facilities, mental hospitals, sanitariums, psychiatric facilities, and other facilities that provide diagnoses by licensed professionals of mental condition or mental illness, including a psychiatric ward in a general hospital.

AFFIRMATIVE DEFENSES

A person is **not prohibited** under 18 U.S.C. § 922(g)(4) if:

The person received relief from Federal firearms disabilities under 18 U.S.C. § 922(g)(4) by:

- ❖ The Bureau of Alcohol, Tobacco, Firearms and Explosives under 18 U.S.C. § 925(c); **or**
- ❖ A proper Federal or State authority under a relief from disabilities program that meets the requirements of the NICS Improvement Amendments Act of 2007, Public Law 110-180.

The mental health adjudication or commitment was imposed by a Federal department or agency, **and** the:

- ❖ Adjudication or commitment was set aside or expunged;
- ❖ Person was fully released from mandatory treatment, supervision, or monitoring;
- ❖ Person was found to no longer suffer from the disabling mental health condition;
- ❖ Person has otherwise been found to be rehabilitated; **or**
- ❖ Adjudication or commitment was based solely on a medical finding without opportunity for hearing by the Federal department or agency with proper jurisdiction.

For further information about section 922(g)(4) or other firearms prohibitions, please contact your local field office of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) by calling (800) 800-3855.

Amended December 2009

**STATE RELIEF FROM DISABILITIES PROGRAMS
UNDER THE NICS IMPROVEMENT AMENDMENTS ACT OF 2007**

The following *minimum* criteria must be satisfied for a State to establish a qualifying mental health relief from firearms disabilities program under the NICS Improvement Amendments Act of 2007 (NIAA), Public Law 110-180, Section 105 (enacted January 8, 2008):

1. State Law [NIAA § 105(a)(2)]: The relief program must be established by State statute, or administrative regulation or order pursuant to State law.
2. Application [NIAA § 105(a)(1)]: The relief program must allow a person who has been formally adjudicated as a mental defective¹ or committed involuntarily to a mental institution² to *apply or petition* for relief from Federal firearms prohibitions (disabilities) imposed under 18 U.S.C. §§ 922(d)(4) and (g)(4).
3. Lawful Authority [NIAA § 105(a)(2)]: A State court, board, commission, or other lawful authority must consider the applicant's petition for relief. The lawful authority may only consider applications for relief due to mental health adjudications or commitments that occurred in the same State.
4. Due Process [NIAA § 105(a)(2)]: The petition for relief must be considered by the lawful authority in accordance with principles of due process, as follows:
 - a. The applicant must have the opportunity to submit his or her own evidence to the lawful authority considering the relief application.
 - b. An independent decision maker—someone other than the individual who gathered the evidence for the lawful authority acting on the application—shall review the evidence.
 - c. A record of the matter must be created and maintained for review.
5. Proper Record [NIAA § 105(a)(2)]: In determining whether to grant relief, the lawful authority must receive and consider evidence concerning the following:
 - a. the *circumstances* regarding the firearms disabilities imposed by 18 U.S.C. § 922(g)(4);
 - b. the applicant's *record*, which must include, *at a minimum*, the applicant's mental health and criminal history records; and
 - c. the applicant's *reputation*, developed, *at a minimum*, through character witness statements, testimony, or other character evidence.

¹ Federal regulations at 27 C.F.R. § 478.11 define the term "adjudicated as a mental defective" as: A determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease: (1) Is a danger to himself or others; or (2) Lacks the mental capacity to contract or manage his own affairs. The term shall include—(1) A finding of insanity by a court in a criminal case; and (2) Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility pursuant to articles 50a and 72b of the Uniform Code of Military Justice, 10 U.S.C. 850a, 876b.

² Federal regulations at 27 C.F.R. § 478.11 define the term "committed to a mental institution" as: A formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug use. The term does not include a person in a mental institution for observation or a voluntary admission to a mental institution.

6. Proper Findings [NIAA § 105(a)(2)]: In granting relief, the authority must issue findings that:
 - a. the applicant will not be likely to act in a manner dangerous to **public safety**; and
 - b. granting the relief will not be contrary to the **public interest**.
7. De Novo Judicial Review of a Denial [NIAA § 105(a)(3)]: The State must also provide for *de novo* judicial review of relief application denials consistent with the following principles:
 - a. The applicant may petition a court of appropriate jurisdiction to review the denial, including the record of the State court, board, commission, or other lawful authority that rendered the decision.
 - b. The reviewing court may, but is not required to, give deference to the decision of the lawful authority to deny the application for relief.
 - c. In cases of denial by a lawful authority other than a State court, the reviewing court must have discretion to receive additional evidence necessary to conduct an adequate review.

Note: In addition to the above-mentioned requirements, NIAA § 102(c)(1)(B) requires a State, on being made aware that the basis under which the record was made available does not apply, or no longer applies, shall, as soon as practicable—

- a. update, correct, modify, or remove the record from any database that the Federal or State government maintains and makes available to NICS, consistent with the rules pertaining to the database; and
- b. notify the Attorney General that such basis no longer applies so that the record system in which the record is maintained is kept up to date.
- c. It is recommended that the State have a written procedure (e.g. State law, regulation, or administrative order) to provide for these NIAA requirements.

NICS Improvement Amendments Act of 2007
List of States with ATF Approved 922(d)(4)/(g)(4) Relief Programs

2009 Certifications (3)

Nevada
New York
Oregon

Statutory Authority

Nevada Revised Statutes § 179A.163
New York Consolidated Laws § 13.09(g)
O.R.S. § 161.387(1); Oregon PSRB Order #2-2011

2010 Certifications (6)

Florida
Idaho
Illinois (through Illinois State Police)
New Jersey
Texas
Wisconsin

Florida Statutes § 790.065(d)
Idaho Code § 66-356
Illinois Code § 430 ILCS 65/10(c)
New Jersey Statutes §§ 30:4-80.8 – 30:4-80.10
Texas Code § 574.088
Wisconsin Statutes §§ 51.20, 51.45, 54.10, 55.12

2011 Certifications (7)

Arizona
Connecticut
Iowa
Kansas
Kentucky
North Dakota
Virginia

Arizona Revised Statutes § 13-925
Connecticut General Statutes § 45a-100
Iowa Code § 724.31
Kansas Statutes § 75-7c27
Kentucky Revised Statutes § 237.108
North Dakota Century Code § 62.1-02
Virginia Code §§ 18:2-308.1:1 – 18:2-308.1:3

2012 Certifications (4)

Indiana
Nebraska
West Virginia
Missouri

Indiana Code §§ 33-23-15-1 - 33-23-15-3
Nebraska Revised Statutes § 71-963
West Virginia Code § 61-7A-5
Missouri Revised Statute § 571.092

2013 Certifications (4)

Delaware
Alabama
Louisiana
Maryland

11 Delaware Code § 1448A(j); 15 DE Reg. 1286
Alabama Code § 22-52-10.8(b)
Louisiana Revised Statutes § 28:57
Code of Maryland § 5-133.3

Total Currently Certified: (24)

Updated: 10/10/13